

Appl. No. 09/664,148
Amdt. dated January 7, 2004
Reply to Office Action of October 8, 2003

PATENT

REMARKS/ARGUMENTS

Amendments

The claims are modified in the amendment. Applicant respectfully requests reconsideration of this application as amended. Claims 1, 9 and 16 have been amended, with the modifications to claim 16 being merely clerical in nature such that the claim scope is unchanged. Therefore, claims 1-24 are still present for examination. No new matter is added by these amendments. Applicant respectfully requests reconsideration of this application as amended.

35 U.S.C. §102 Rejection, Mullaly et al. or Fanning et al.

The Office Action has rejected claims 1-14 and 16-21 under 35 U.S.C. §102(e) as being anticipated by cited portions of U.S. Patent No. 6,304,909 to Mullaly et al. ("Mullaly"). Further, claims 1 and 9 are also rejected under 35 U.S.C. §102(e) as being anticipated by cited portions of U.S. Patent No. 6,366,907 to Fanning et al. ("Fanning"). Applicants believe the amended claims are not anticipated by either Mullaly nor Fanning. More specifically, the following limitations are not taught or suggested: (1) that the first source can request a content object from an originating source in response to an earlier request for the content object as generally required by claims 1 and 9; and (2) that ranking of transfer nodes being based in-part upon the storage capacity of the storage node as required by claim 16. For at least these reasons, lifting the novelty rejection is respectfully requested.

1st Missing Limitation: Relay Content Object

The invention of claims 1 and 9 generally require automatic source selection for a requested content object that is relayed through one of the sources. Mullaly allows automatic selection of the delivery method from the origin server (e.g., by e-mail if the wait would be too long), but doesn't allow selecting the source for the content object. See Mullaly, col. 5, lines 32-43. Fanning only provides a search engine showing multiple sources for similar items that meet some search criteria (Fanning, col. 3, lines 6-8), those files found in the search can be

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downloaded in a peer-to-peer fashion directly from another peer provider server (*Id.*, col. 4, lines 21-24).

2nd Missing Limitation: Ranking Nodes On Capacity

Paragraph 17 of the Office Action notes that Mullaly teaches the node selection criteria could be any type of limitation. Regardless of this, Mullaly does not teach or suggest that the selection could be based upon the storage capacity of the node. This is the specific situation claimed. Since Mullaly only supplies content objects it originates, storage capacity is irrelevant as the only relevant query is whether the origin has the content object or not. Applicants respectfully request that this limitation be specifically addressed.

For at least these reasons, withdrawal of the novelty rejection is respectfully requested.

35 U.S.C. §103 Rejection, Mullaly et al.

The Office Action has rejected claims 15, 23 and 24 under 35 U.S.C. §103(a) as being unpatentable over Mullaly. As best understood by the Applicants, Official Notice is apparently relied upon in paragraph 28 of the Office Action to show missing limitations and the motivation to combine those missing limitations. If Official Notice is maintained for these propositions, Applicants respectfully traverse this Official Notice and hereby request an express showing of documentary proof of these propositions as set forth in MPEP 2144.03.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is urged. Reconsideration of the claims in their current form is respectfully requested.

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If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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